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**TESTIMONY OF MAINE ATTORNEY GENERAL STEVEN ROWE ON  
STANDARDS PROPOSED BY THE ENVIRONMENTAL PROTECTION  
AGENCY FOR MERCURY EMISSIONS FROM POWER PLANTS  
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Good afternoon. Thank you, Congressman Allen, for the opportunity to present these comments on a matter of great importance for the State of Maine and its citizens: the need for strict federal mercury emission standards for power plants. My office formally requested that EPA hold a public hearing on this proposal in New England, but that request was denied. With that in mind, I especially appreciate your being here today to draw attention to this matter.

Regrettably, EPA's recent regulatory proposals under the Clean Air Act tend to fall into two categories: (1) those that would degrade air quality, and (2) those that would prevent air quality from improving. The agency's New Source Review regulations are a notorious example of the first category. As Attorney General, I have vigorously opposed EPA's efforts to gut New Source Review, a part of the Act that requires the nation's worst polluters to install modern control technology when modifying their plants. These rules would cause Maine's already serious ozone pollution problem to worsen significantly. We sued the agency in federal court to prevent these reforms from going into effect, and won a major victory on Christmas Eve when the court issued a stay until the case is decided on the grounds that the rules appear to violate the Clean Air Act.

EPA's proposed mercury rule falls into the second category: a new program that will prevent us from realizing the reductions in mercury emissions that the law promises. This is not a bold new environmental initiative, but a giveaway to the owners of coal-burning power plants.

Atmospheric mercury deposition is a serious public health and environmental problem. Mercury is a powerful neurotoxin that accumulates in the body. EPA's own studies show that over 600,000 babies born in this country each year may be exposed to levels of mercury in the womb so high that it can affect their brain development. Maine and 44 other states have issued fish consumption advisories because of mercury levels found in our freshwater fish. Mercury is also poisoning the wildlife that feed on those fish. Loons in northern New England, the classic symbol of our wilderness lakes, have the highest levels of mercury in the country.

Mercury emissions from power plants to our south and west are a major source of deposition in Maine, and we desperately need strong federal regulation to address this problem. Despite the need for strict federal mercury emission standards, and the fact that such standards are legally required by the Clean Air Act, EPA fails to deliver in this proposal.

As a matter of policy, this proposed rule is flawed for two basic reasons. First, the levels of reduction in mercury emissions are far too low. The proposed reductions not only are insufficient to protect public health and the environment, but they are considerably less than what can be achieved through available control technology. Second, the proposed “cap and trade” program is inappropriate for regulation of a toxic substance like mercury. This approach allows some sources to accumulate large quantities of “pollution credits”, which in turn allows them to continue to pollute at high levels. The result is “hotspots” of deposition in areas downwind. While a cap and trade program may make good sense for regulating a non-toxic pollutant like carbon dioxide, it is unacceptable for a hazardous pollutant like mercury.

As a matter of law, EPA’s proposal is defective in several ways. Three years ago EPA formally concluded that mercury is a hazardous air pollutant, and therefore it is “appropriate and necessary” to regulate its emissions from power plants under Section 112 of the Act. However, EPA has now tried to reverse course, and has announced that mercury may not be a hazardous air pollutant after all. Instead, the agency suggests that it may be able to regulate mercury under Section 111 of the Act, governing New Source Performance Standards. This idea flies in the face of the plain language of the statute, which requires that EPA conduct a formal “delisting process” before it can decline to regulate a substance under Section 112 that it has concluded is a hazardous air pollutant. EPA’s proposal to summarily rescind its prior finding that regulation of mercury is “appropriate and necessary” under Section 112 has no support in the law.

There are numerous other legal defects with this proposal, and we are describing them in detail in written comments to be submitted to EPA. For our purposes today, it is enough to observe that the Environmental Protection Agency is once again failing to fulfill its responsibility to adopt standards that protect the public health and environment. Instead, the agency seems committed to re-interpreting the laws it administers in an attempt to avoid that responsibility. If this proposal is finalized in its current form, we will likely be forced to file another lawsuit in federal court to force EPA to do its job. I sincerely hope that will not be necessary. Thank you.